IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 23628 of 2007(K)

PETITIONER:

V.M.SASI, AGED 52 YEARS,
S/O VADARIYATTIL MADHAVAN,
ANJUR VILLAGE AND DESOM,
THRISSUR TALUK, THRISSUR DISTRICT.

BY ADV. SRI.JIJO PAUL

RESPONDENTS:

---

1. VARGHESE, AGED 50 YEARS,
S/O MELITTA ANTONY, ANJUR VILLAGE AND DESOM,
THRISSUR TALUK, THRISSUR DISTRICT.

2. SHEELA, AGED 43, W/O MELITTA VARGHESE,
ANJUR VILLAGE AND DESOM, THRISSUR TALUK,
THRISSUR DISTRICT.

3. KAIPARAMBU GRAMA PANCHAYATH,
REP-BY SECRETARY, MUNDUR P.O.,
THRISSUR DISTRICT.

R1 & R2 BY ADV. SRI.MILLU DANDAPANI
R3 BY ADV.SRI.A.C.DEVY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.23628/07

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF JUDGMENT DT.20.3.07 OF PRL.MUNSIFF, THRISSUR IN O.S.811/06.

EXT.P2 – TRUE COPY OF REPRESENTATION DT.13.6.07 FILED BY PETR. BEFORE R3

EXT.P3 – TRUE COPY OF NOTICE ISSUED BY R3 DT.7.7.07 TO R1 AND R2.

EXT.P4 – TRUE COPY OF REPLY SUBMITTED BY R1 AND R2 TO EXT.P3, DT.9.7.07.

EXT.P 5 – TRUE COPY OF PHOTOGRAPH SHOWING THE CONSTRUCTION MADE BY R1 AND R2.

RESPONDENTS' EXTS:

EXT. R1(1) – PHOTO COPY OF WRITTEN STATEMENT FILED ON BEHALF OF DEFENDANTS 1 AND 2 IN O.S.811/06 BEFORE MUNSIFF, THRISSUR ON 8.8.06

EXT.R1(2) – PHOTO COPY OF AFFIDAVIT DT.27.6.07 FILED ON BEHALF OF APPELLANTS IN A.S.231/07 BEFORE DISTRICT COURT, THRISSUR.

EXT.R1(3) – PHOTO COPY OF I.A.2283/07 FILED BY DO. IN DO.

EXT.R1(4) – PHOTOCOPY OF ORDER DT.9.7.07 IN EXT.R1(3) I.A.

EXT.R1(5) – PHOTO COPY OF NOTIFICATION DT.6.6.07 OF THE GOVERNMENT OF KERALA.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

.....

W.P.(C)No.23628 OF 2007

.....

DATED THIS THE 4TH SEPTEMBER, 2007

J U D G M E N T

The grievance of the petitioner is that respondents 1 and 2, his neighbours constructed a building projecting into his property. He moved the civil court and that court became inclined to grant an order of mandatory injunction directing removal of the protruding portions which are seen in Ext.P5 photograph. Against the order of mandatory injunction, respondents 1 and 2 preferred an appeal before the District Court and the District Court granted stay of operation of the order. The grievance of the petitioner is that under the cover of the order of stay granted by the District Court, respondents 1 and 2 are going ahead with the construction of their building and the Panchayat is not taking any action.

2. The party-respondents have filed a counter affidavit. Ext.R1 (1) produced along with the same is copy of the written statement which they had filed in the suit filed by the petitioner. Ext.R1(2) is copy of the affidavit and Ext.R1(3) is copy of the stay petition which respondents 1 and 2 had filed before the District Court. Ext.R1(4) is copy of the order of stay passed by the District Court and Ext.R1(5) is the Government notification dated 6.6.2007 by which the Kerala

Municipality Building Rules, 1999 have been extended to all the Village Panchayats in Kerala State.

3. Heard Sri.Jijo Paul, counsel for the petitioner, Sri.A.C.Devy, counsel for the Panchayat and Sri.Millu Dandapani, counsel for respondents 1 and 2.

4. Sri.Jijo Paul would draw my attention to Ext.P3 notice issued by the Panchayat and submit that it will suffice if the Panchayat is directed to finalise the proceedings which are proposed as per Ext.P3.

5. The learned counsel for the party-respondents would submit that Ext.R1(5) notification is only prospective in effect and it will not be proper or just on the part of the Panchayat to invoke the Municipality Building Rules, 1999 and enforce demolition of the party-respondents' building. He would further submit that the order of mandatory injunction is under challenge before the District Court and the legality of that order is to be decided by the District Court only. Mr.A.C.Devy, Standing Counsel for the Panchayat would submit that Ext.R5(1) notification is only prospective in effect.

6. I do not propose to decide the issue between the parties on its merits. I dispose of the Writ Petition itself issuing the following directions:

The 3rd respondent-Panchayat is directed to hear the petitioner and also respondents 1 and 2 and to take a final decision on the action which is proposed as per Ext.P3 at the earliest and at any rate within six weeks of receiving copy of this judgment.

(PIUS C.KURIAKOSE, JUDGE)

tgl